

S. Bij. 11/53

1953

File No.



Legal DEPARTMENT
E. BRANCH

Subject:— Suits— Bijapur

C. S. No. 132 of 1952

Krishnaji Gundu Galgali Plff.
v/s
The State of Bombay - Deft.

For a declaration that the order
of the collector discharging him
from service is illegal and not binding
upon him and for a mandatory injunction
directing Govt. to reinstate him in service

44(E)

File No.

Std. Sectt. Slip 24-B

S. Bij 11/53

11/53

C.S.No.132 of 1952.

In the court of the Civil Judge Senior Division, Bijapur

1. Krishnaji Gundo Galgali, Brahmin, Occupation;; Plaintiff Nil at Present, aged 40 years, residing at Jamakhandi, district Bijapur.

Vs,

1. The State of Bombay through the Collector, Defendent. of the District of Bijapur, at Bijapur.

Claim valued at Rs. 205/- for court fees and jurisdiction.

The Plaintiff begs to submit as under:--

1. The Plaintiff joined the service of the Jamakhandi state in the year 1942 as a clerk. He was made permanent from 19-4-47 in that post as per Jamakhandi State. Gazette -- notification dated 15-9-49 at page 301 after having passed the sub-service departmental examination under the state rules held in the December 1946. After the merger of the Jamakhandi state in the province of Bombay the Plaintiff was absorbed in the new set-up and continued as a clerk in Treasury branch at Jamakhandi till Feb. 1949. From Feb '49 onwards the Plaintiff was transferred to the Supply Dept.. with an increment of Rs. 25/- in the pay under the orders of the Chief Administrator, No. 54/XII.17036 dated 1-22-49. The Plaintiff was further posted as Godown Keeper at -- Banhatti village from 1-8-49 under the orders of the -- Collector of Bijapur.
2. The Plaintiff was continuing in service of the State of Bombay in the Supply Dept. as a Godown keeper at -- Banhatti till 11-10-1949 when relying upon an unfounded and baseless report of the Prant Officer of Mr. Dalvi who paid a surprise visit to the godown at Banhatti and inspected the stores but without getting full information or explanation from the Plaintiff reported that the conduct of the Plf. was highly suspicious and the Plf. was discharged by an order of the District Magistrate and Collector of Bijapur dated 11-10-1949, alleging that the Plf. was reported to be -- unreliable, in respect of his work as the G.K. at Banhatti there being some alleged attempt of misappropriation of foodgrains stored.

3. The Plf. submits that the order of discharge dis- continuing the services of the Plf. passed by the D.M. and Collector dated 11-10-1949 is unwarranted and illegal. Plf. further submits that the allegations based upon the baseless report of thereport of the Prant Officer Jamakhandi that the Plf. is unreliable is denied as the same is unreal and not based on facts or circumstances in report of the work of Plf. in the part of the godown keeper at Banhatti. No enquiry as such was ever held giving opportunity to the Plf. to prove his innocence or reliability. The order of discharge was passed summarily and hence it is not legal and binding upon the Plff. as it contravenes the principles of the B.C.S.Rs. Rules applicable to permanent servants of the State. The Plf. was and ought to be treated as a permanent servant under Resolution of Government of Bombay dated 26-4-50.

4- The Plf. denies that he ever acted against rules and discharged his duties as G.K. at Banhatti with any motive of wrongful loss to Govt. or wrongful gain to himself. The facts also do not disclosed any fault with the plaintiff in respect of his handling of the foodgrains stock stored at the Godown at Banhatti of which he was the keeper. It is therefore submitted that the reasons given by the D.M. of Bijapur terminating the Plf's services is unreal and unwarranted.

5. Plf. cannot therefore be discharged from the service on such unreal ~~and~~ reasoned and without inquiry with opportunity to the Plf. to explain the things, hence this suit for declaration that the order of the District Magistrate, and the Collector Bijapur dated 11-10-1949 discharging the Plf. from the service is illegal ~~and~~ ultravires and not binding upon Plf. as also for a consequential relief of Mandatory injunction to reinstate the Plf. as a clerk in the service of the State of Bombay and for further consequential reliefs.

6. The cause of action arose within the jurisdiction of this court in October 1949 when the Plf. was discharged from the services as a godown keeper at Banhatti.

7. The cause of action having arisen within the territorial jurisdiction of this court this court has jurisdiction to conduct this suit

8. As this suit is for declaration and for necessitating action it is valued at Rs. 200/- plus Rs. 5/- respectively and court fee of Rs. 18-12-- and annas eight in all Rs. 19-4-0 is paid and the valuation is the same for the purpose of -- jurisdiction and pleaders' fees.

9. Plf. has served notice on the Collector of Bijapur as required by Sec. 80 of the C.P.Code and the suit is filed after the expiry of two months from the date of the service which is 2-11-1951.

10. The Plf. prays:-----

- (1) It be deemed that the order of the Collector of Bijapur discharging the Plf. from his services is illegal and not binding on the Plf.
- (ii) A mandatory injunction be served upon the Collector (Defendent) to reinstate Plf. in the service.
- (iii) Costs of this suit be awarded.
- (iv) Any other relief that the Plaintiff may be entitled in justice and equity.

Dated

X XXX X

I, Krishnaji Gundo Galgali, of Jamakhandi, solemnly affirm on oath that the contents of paras 1 to 10 are true to my knowledge and understanding and I have signed thereunder at Jamakhandi on

dated 14-4-52

G.N.Gokhale, Pleader.

XXXXX

Bijapur Civil Suit No. 132 of 1952.

This is a suit filed by Shri Krishnaji Gundo Galgali, an ex-servant of the former Jamkhandi State and a Godown Keeper discharged from service under District Magistrate and Collector, Bijapur's Order No. CSEST dated 11-10-1949 against the State of Bombay for a declaration that the said order of the Collector is illegal and not binding upon him and for a mandatory injunction directing Government to reinstate him in service.

2. The suit is defensible.

3. Defence of the same may be sanctioned on the lines of the accompanying brief.

Ref
15/11

Pol (M.L.)

Resubmitted.

The grounds of defence have been revised as directed by Mr. Pol (M.L.).

Ref
19/11

Pol (M.L.) . Mu
19-11-53

Received in C. S. D. 229
on 21/11/53

with file or BCS/Ref

* Secy. C. S. D. 11/21/11

1933
23/11/53
E

no. 1367/E
dt. 21-11-53.

No. 1244/E
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 20th January 1952.

Subject:- *Bijapur* Civil
Suit No. *132* of 1952.

MEMORANDUM.

The District Government Pleader, *Bijapur*
is informed that the defence of the suit noted above
is sanctioned and he is requested to conduct the same
on the lines of the brief, a typed copy of which is
sent herewith in advance.

Papers of the case in *five files*
received from the Collector accompany.

oe *del*
for Remembrancer of Legal Affairs.

To

The District Government Pleader, *Bijapur*

KML/29.8

Submitted for signature

Shu
19/1

S. Supot

Justice
h
20/1

GR LD No 16023/E DT 29/5/53
has been sent to the press on 30/5/53

Ku
20h

6.8
9
Legal Department.

Submitted.

The draft Written Statement received with the D.G.P.'s letter at p. 37 ante, has been examined in the light of the brief prepared in the case. ^ARevised draft is put up herewith for approval. The same may be forwarded to the D.G.P. to file ^{it} in Court if necessary.

With reference to para 2 of his letter the D.G.P. may be instructed to bring Government's orders referred to therein to the notice of the Court and to ask the plaintiff as to whether he still wants to continue the suit. Presumably the plaintiff may ~~press~~ press his claim for costs. In that case, the Court should be requested to dis-allow it as the plaintiff had unnecessarily rushed to the Court when the question of re-instating him in service was under the consideration of Government. It should also be pressed that as there is no decision on

merits and the plaintiff has achieved his object, it would be just and fair to order that each party should bear its own costs.

A draft memo to the A.C.J. is also put up herewith for approval and signature.

MR.
S.P.
Sol (M.L.) K
5/2

11
No. 2422 | E
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1) 5th February 1953.

Subject: Bijapur C.S. No.132 of 1952.

Memorandum.

With reference to his letter No.167 dated 28-1-1953 on the above subject, the District Government Pleader, is informed that two copies of revised draft Written Statement are sent herewith. The revised draft Written Statement should be filed in Court, if necessary.

As regards para 2 of his letter the District Government Pleader is requested to bring Government's orders referred to therein to the notice of the Court and to ask the plaintiff as to whether he still wants to continue the suit. Presumably the plaintiff may press his claim for costs. In that case, the Court should be requested to disallow it as the plaintiff had unnecessarily rushed to the Court when the question of re-instating him in service was under the consideration ...

consideration of Government. It should also be pressed that
as there is no decision on merits and the plaintiff has
achieved his object, it would be just and fair to order
that each party should bear its own costs.

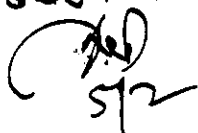


for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Bijapur.

Submitted for Signature.


5/2

Soll (M.L.)

Issued

5/2

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION,

AT BIJAPUR.

Civil Suit No. 132 of 1952.

Krishnajji Gundo Galgal: ... Plaintiff.

vs.

The State of Bombay ... Defendant.

The written-statement of the defendant to the suit is as follows :-

1. The plaintiff's claim in the suit is denied. The plaintiff is not entitled to any of the reliefs prayed for by him.
2. The allegations in paras 4, 5 and 6 of the plaint are denied.
3. The plaintiff's allegation in Para 1 of the plaint that he was absorbed in the new setup is not correct and is denied. The new setup actually came into existence on 1-8-1949.
4. The plaintiff's services were estimated to be not likely to be required on reorganisation. The plaintiff was served with three months' notice of discharge dated 20-11-48 stating that as it was not possible to continue his services owing to superfluity of staff he will be discharged from service after three months from 1-12-48. The plaintiff's services were terminated by the Chief Administrator, Sangli under his order dated 13-5-49 with effect from the date on which the new setup came into existence i.e. 1-8-1949. The plaintiff's services in the State were treated to have been terminated on 31-7-1949.
5. From 1-8-1949, the plaintiff was appointed temporarily as Godown Keeper at Banhatti. His appointment was temporary and terminable at any time without any notice and without reasons being assigned. It was on that undertaking that plaintiff held the post of Godown Keeper.

The Prant Officer, Jamakhandi Division paid a visit to the godown on 27-9-1949 and found that there was unaccounted excess of food-grains and that the conduct of the godown keeper was suspicious. He suspended the plaintiff. He addressed a letter to the Mamlatdar in this respect and forwarded a copy thereof to the District Magistrate. The plaintiff's services thus were no longer required. His services were accordingly terminated and dispensed with by the District Magistrate under his order dated 11-10-1949 with effect from the date of his suspension. The plaintiff's allegations in the plaint which are contrary to what has been stated in this para are denied.

6. The allegations of the plaintiff in para 2 of the plaint that the report of the Prant Officer was unfounded and baseless are denied. The allegations of the plaintiff in paras 3 of the plaint namely "The plaintiff submits ----- of the godown keeper at Banhatti" are also denied.

7. The order of the Collector and District Magistrate dated 11-10-1949 is legal and binding on the plaintiff and the allegations to the contrary in para 3 of the plaint are denied. This order does not contravene the provisions of B.C.S. Rules as contended by the plaintiff in para 3 of the plaint. In fact there is no provision in the Rules which requires an inquiry to be held before the services of any temporary servant like the plaintiff, engaged on such terms as stated in para 5 above, are terminated.

8. The plaintiff's allegation that he was and ought to be treated as a permanent servant under Government Resolution dated 26-4-1950 is not correct and is denied.

On these

On these grounds, among others, the plaintiff's¹⁵
suit should be dismissed with costs

District Government Pleader, Bijapur.

I, A.C. Angadi, District Government Pleader, Bijapur,
hereby declares that what is stated in paras 1 to 8 above
is true on information received and believed to be true.

Signed at Bijapur on _____

District Government Pleader, Bijapur.

Special C.S.No. 132 of 1952.

ISSUES.

1. Whether the plaintiff proves that he was a permanent state servant while he was absorbed in the Bombay State service in the new set up ?
2. Whether he proves that the order passed by the Collector on 11-10-1949 was illegal ?
3. Whether he is entitled to costs in view of the order of the Collector passed by him subsequently reinstating the plaintiff in service ?
4. What order ?

13-6-1953.

Sd. M.H.Kazi.

Civil Judge, Jr.Dn., Bijapur.

Express Delivery

No. 1100 of 1953.
26th August 1953.

To

The Remembrancer of Legal
Affairs, Secretariat, BOMBAY.

Subject: Bijapur Civil Suit No. 132/1952.

1. Krishnaji Gando Galgali.

Vs.

1. The State of Bombay.

Sir,

In the above suit, the plaintiff applied to the Court to call for the letter-order of the Civil Supplies Department No. 978/2549/ESTT(D) dated 13-1-1953.

The Court passed an order to issue summons in the form of letter of request to the Deputy Secretary, Government, Civil Supplies Department, Bombay to send the letter (order) with some clerk of his office.

I have sent herewith a copy of the same

and it is marked by me as E.

The Court accordingly is issuing summons and the date fixed is 28-9-1953.

(2) I am of opinion that the letter is strictly confidential. (Please vide Rule 179 of Law Officers Rules and Rules for the conduct of Legal Affairs to Government at page 86 1951 Edition).

In this connection I also invite your attention to Rule 179 of the said Rules.

It is therefore necessary that on summons being served, the Deputy Secretary should send his Clerk to Court with the document and with an order to the effect mentioned in that Rule claiming privilege under section 123 read with section 124 and 162 of the Indian Evidence Act.

(3) I presented written-statement to the suit, under instructions from you by your memorandum



21091
29/8/53
E

No. 2422/E of 5-2-1953, I put in a pursis in Court on the day on which I presented my written-statement to the suit. I have sent herewith a copy of that pursis. It is marked A. I produced with it a copy of order of District Magistrate. Copy of it is marked as B. A copy of the objections of the plaintiff in this respect is sent herewith and it is marked as C. Thereafter issues were framed, and copy of issues sent herewith is marked D. Thereafter on the day of hearing application to summon the Deputy Secretary as stated in para 1 above was given.

I think that in view of Rule 176(6) of the Law Officers Rules and Rules for the conduct of Legal Affairs of Government reference to you by the Deputy Secretary is necessary. I am therefore forwarding a copy of this report to the Deputy Secretary to Government Civil Supplies Department, Government of Bombay.

I request you to advise the Deputy Secretary with regard to the steps to be taken by him. I also request you to issue to me such instructions as you deem fit in the matter.

Yours faithfully,

Ahmed

District Government Pleader,

Bijapur.

Submitted for orders.

29/8

Doc (M)

193

Civil Suit No. 132 of 1952.

In the Court of the Civil Judge,
Senior Division, Bijapur.

1. Shri Krishnaji Galgali, Plaintiff.
Vs.
1. The State of Bombay. Defendant.

Herein the District Government Pleader, Bijapur submits that the Government has set aside the order of the District Magistrate, Bijapur, dated 11-10-1949. Thereafter the District Magistrate Bijapur reinstated the plaintiff in service by his order No. P.(K.G.G.) dated 21-2-1953, a copy of which is herewith enclosed.

The defendant has also put in his written statement today. It is therefore submitted that if the plaintiff does not withdraw the suit, the Court may be pleased to dismiss the same.

In the circumstances the parties may be ordered to bear their own costs.

No.

Sd. A.C. Angadi.

Bijapur, 30-3-1953.

District Government
Pleader, Bijapur.

The learned pleader for the
plaintiff to have his say.

30-3-53. Sd. M.H. Kazi.

Civil Judge.

Read:-

1. The letter No. 444 dated 28-9-1949 from the Mamlatdar, Jamkhandi.
2. The D.M. Bijapur's No. CSFST dated 11-10-1949.

O R D E R.

Shri K.G. Galgali, Ex-Godown Keeper, Banhatti, is reinstated in service as Godown Keeper with effect from the date of termination of his services i.e. from 11th October, 1949. And further Shri K.G. Galgali, is posted as Godown Clerk at Jamkhandi, vice Shri L.M. Bhagwati, proceeded on leave.

Sd. M. Allahbaksh,
District Magistrate, Bijapur.

Copy to:-

1. Shri K. G. Galgali, at Jamkhandi.
2. He should join his appointment as Godown clerk, Jamkhandi, within 3 days from the date of this order.
2. Copy to the Mamlatdar, Jamkhandi.
3. He should report the actual date of the joining of Shri Galgali as Godown Clerk, Jamkhandi, on the very day of his joining by a telegram. Shri Galgali, should be paid full pay and allowances admissible to him for the period from the date of his suspension viz: 27-9-1949 till the date of his reinstatement and also for the period of notice till the final termination of his services.

Copy to:-

1. The prant Officer, JKD.Dn., Jamkhandi.
2. S.A.O. Bijapur.
3. T.O., Bijapur and ST.HK.

Sd.

For District Magistrate, Bijapur.

X.22.

Admitted in evidence.

Sd. M.H. Kazi.
30-3-1953.
Civil Judge, Sp.Dn.,
Bijapur.

In the Court of the Civil Judge, Sr.Dn.,

Bijapur.

1. Krishnaji Gundo Galagali of Jamkhandi. Plaintiff.

Vs.

(1) The state of Bombay. Defendant.

Herein plaintiff's say to Exh.21 given by the District Government Pleader, on behalf of defendant is submitted by his pleader which is as follows:-

(1) The plaintiff's suit was mainly based upon the illegality of the order of discharge issued by the Collector of Bijapur on 11-10-1949. The plaintiff contended inter-alia that the above said order was illegal against the principles contained in the B.C.S.Rules and hence not binding on the plaintiff and further plaintiff claimed further relief calling upon Government to reinstate in service.

(2) The contention of the plaintiff regarding the untenability of the order of discharge dated 11-10-1949 by the Collector of Bijapur, is duly admitted by the defendant as the order is set aside by the Government. The further prayer regarding reinstating plaintiff is also accepted by the defendant as an order to reinstate plaintiff in service is duly issued by the Collector of Bijapur. The defendant by their action, though not in words, have principally and in fact admitted the claim of plaintiff.

Under the circumstances, the suit for the plaintiff will have to be decreed with costs and the question of withdrawal does not arise. The plaintiff is entitled to his costs in full which may be awarded.

Dated 15-4-1953.

Sd. G.L.Gokhale.

Pleader for the plaintiff.

Read and recorded.

Sd. M.H.Kazi.

~~15~~ 15-4-1953. Civil Judge.

25 61
Exh. 29.
Special C.S.No.132/1952.

I S S U E S.

- (1) Whether the plaintiff proves that he was a permanent State Servant while he was absorbed in the Bombay State Service in the new set up ?
- (2) Whether he proves that the order, passed by the Collector on 11-10-1949 was illegal ?
- (3) Whether he is entitled to costs in view of the order of the Collector, passed by him subsequently reinstating the plaintiff in service ?
- (4) What order ?

13-6-1953.

Sd. M.H. Kazi.

Civil Judge, Sr.Dn.,
Bijapur.

E

2 / 26

C.S.No. 132/1952.

Exh. 33.

In the Court of the Civil Judge,

Senior Division, Bijapur.

1. Krishnaji Gundu Galagali of Jamkhandi. Plaintiff.

Vs.

1. The State of Bombay.

Defendant.

Herein application on behalf of plaintiff:-

Plaintiff has served notice upon defendant to produce the letter-order of the Civil Supplies Department No.978/2549/Estt.(D) dated 13-1-1953. The plaintiff also tried to get a certified copy of the same from the Civil Supplies Department, to however by their letter No.978/Estt(d) dated 29th July 1953 the plaintiff is informed that no certified copy could be supplied and that the defendant is ready to send the same to this Court if so asked for by the Court Officially.

As the question at issue between the parties rests mainly upon the abovesaid order, which goes to the root of the matter, it is requested that the Court may be pleased to call for the said order (i.e. Government Letter) above referred to from the Civil Supplies department for the perusal of the Court.

The letter dated 29-7-1953 is attached herewith.

Dated, 7-8-1953.

Sd. G.N.Gokhale.

Pleader for the plaintiff.

The other side to have his say.

7-8-1953. Sd. M.H Kazi.
Civil Judge,

The application is made at late stage on the day fixed for hearing.

I oppose the application. It is not correct to say that the question in issue rests upon the order sought to be

called for.

The statement that plaintiff has served notice upon defendant to produce order is not correct.

7-8-53. Sd. A.C.Angadi.

District Government
Pleader, Bijapur.

In the form of letter of ~~xxxx~~
request summons to the Dy. Secretary Government Civil
Supplies Department, Bombay to send the letter (Order)
with some clerk of the office, at the cost of applicant.
For the present Rs.50/- to be deposited by the applicant.

7-8-1953. Sd. M.H.Kazi.

Civil Judge.

No. 21543/E 29
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 23rd October 1953.

From

The Remembrancer of Legal Affairs,
Government of Bombay,
Legal Department.

To

The District Government Pleader,
Bijapur.

Subject: Bijapur Civil Suit No.132 of 1952.
K.G.Galgali
vs.
The State of Bombay.

Sir,

I have the honour to state that a letter purporting to be "a letter of request" is received by the Deputy Secretary, Civil Supplies Department, Bombay, from the Civil Judge, Senior Division, Bijapur. It bears a No. 1091 of 1952 and it was apparently issued by the Court on 6-10-1953. The original letter is attached herewith.

2. It is difficult to make out from the letter, as it is worded, what exactly is the direction of the Court. There is no order that a particular witness should appear in Court to produce a particular document. The letter is so imperfectly worded that it is impossible to make out what is the order of the Court.

3. The letter purports to have been issued under Order 26, Rule 5, Civil Procedure Code. A reference to that provision would show that it provides for the examination of a foreign witness on commission. It is not clear whether in this case the Court intends to examine any witness on commission.

4. The contents of the letter ^{seem to have been} copied in part from the Form printed at Form No.8 of Appendix H to the Civil Procedure Code. That Form relates to the return to be made by the foreign court on the execution of the commission for the examination of a witness. This form is clearly inappropriate in the present case.

5. The last para. of the letter is worded as follows:-

" And I further have the honour to request that you will be pleased to cause the answer the said letters, papers and documents produced upon such examination by the seal of your Tribunal, or in such other way as is in accordance with your procedure and to return the same together with such request in writing. "

This hardly makes any sense.

6. You are, therefore, requested to bring these facts to the notice of the Court and to request the Court to issue a proper letter stating in clear terms what the Deputy Secretary, Civil Supplies Department, is called upon to do. If the request is for the production of a document, sufficient time may be given to enable the Government to decide if the document called for should ^{be} produced or if privilege should be claimed in respect of the same.

Yours faithfully,

.OC
For

Shree
Remembrancer of Legal Affairs.

P.S.

The original "letter of request " sent herewith may be returned.

*1/20/81
6/2/81
X*

No. 1353 of 1953.
30-10-1953.



To

The Remembrancer of Legal Affairs,

Bombay Castle, Bombay No.1.

Subject:- Bijapur Civil Suit No.132 of 1952.

(1) K.G.Galgali ... plff.

Vs.

(1) The State of Bombay.

Sir,

With reference to your letter No.215443/E of 23-10-1953, I have the honour to state that I brought the facts to the notice of the Court and put in a Pursis as per copy herewith attached. The Court ordered that a summons to produce the document in the form of a letter of request be issued.

The plaintiff thereafter put in yesterday a Pursis, Exh.43, (as per copy sent herewith) to the effect that the plaintiff does not wish to prosecute the suit any further in view of my Pursis Ex.21 (put in on 30-3-1953 by me under instructions received from you by your Memorandum No. 2422/E of 5-2-1953). A copy of this Ex.21 is herewith attached. ~~I submitted~~

The plaintiff thus by his pursis Ex.43 pressed for his costs. I submitted that the parties may be ordered to bear their own costs after hearing both sides.

The point was argued yesterday and the judgment is reserved.

2. I have thus returned herewith the original letter of request sent to me by you with your above letter.

Yours faithfully,

A handwritten signature in dark ink, appearing to be 'A. K. ...', written over a horizontal line.

Dist.Govt.Pleader,Bijapur.

26420
3/11/53
E

L.D.

Submitted.

Pl. see this office letter No. 21543/E dated
23rd October 1953. In view of the ~~xxx~~ developments
now reported by the D.G.P, the Dy. Secretary, C.S.D.,
is not now likely to receive any fresh letter of
request from the Court for the production of the
C.S.D. letter No. 978/2549/Estt.(d) dated 13.1.1953
to the Collector of Bijapur. We may however, await
receipt of further communication from the D.G.P
in the matter.

Sw/A

del

In the Court of the Civil Judge, Sr.Dn.Bijapur.

1. Krishnaji Gundo Galgali, Brahmin, occupation
Nil at present, age about 40 years, residing at
Jamhhandi Dist.Bijapur. ... plff.

Vs.

1. The State of Bombay through the Collector of
the Dist. of Bijapur at Bijapur. ... Defendant.

Order below Ex.1.

The suit was filed by the plff for a declaration that the order of the Collector discharging the former from service was illegal and not binding on him and also for an injunction for restraining him. The deft filed the W.S. Ex.19, denying the allegations made in the plaint and justifying its actions taken in the matter. It stated that plff's conduct was found to be suspicious by the Prant officer when the plff was working as a temporary go-down keeper. It stated that there was no provision in the B.C.S.Rules for holding an inquiry in respect of a temporary servant and that the order of the District Magistrate did not contravene any rule of the B.C.S.Rules. It also prayed for costs of the suit.

But on the very date of filing of the W.S. Ex.19 the deft also filed the purshis, Ex.21, stating that the deft had set aside the order of the Dist.Magistrate of 11-10-1949 and that the Dist.Magistrate had reinstated the plff in service in 1953. He further stated in the said purshis that the suit would not survive and that it should either be ~~entitled~~ withdrawn by the plff or that it should be dismissed. The plff replied to Ex.21 at Ex.24 by saying that his suit should be ~~deemed~~ ^{deemed} with costs as plff's rights were recognised by the deft.

The issues were framed at Ex.29 from the pleadings. There was no necessity of any oral evidence in the case as both the parties relied on the documents Ex.s 21, 35, 39. The plff also desired the prosecution of some other documents by the deft. In the meanwhile, the learned

33
No. 132 of 1953.
~~Civil Suit~~
4-11-1953.

From

Shri A.C. Angadi, LL.B.,
Dist. Govt. Pleader, Bijapur.

To

The Collector of Bijapur.

Subject:- Bijapur Civil Suit No. 132 of 1952.

(1) K.G. Galgali Ex-go-down keeper, ...plff.

Vs.

(1) The State of Bombay.

Sir,

The above suit was decided to-day. The order of the Court is that the suit does not survive as the relief sought by the plaintiff is amicably granted and it is therefore disposed of. The defendant do pay the costs of the plaintiff's suit except those of pleaders' fees. The defendant do bear its own costs.

(2) I have sent herewith an uncertified copy of the Judgment of the Court.

26826
10/11/53
E
(3) ~~The decision in this suit should be acquiesced in.~~ ^{about} The decision in this case ~~of~~ the costs should be acquiesced in. There does not appear to be any good ground to prefer an appeal from the order in respect of costs. It may be noted that plff has not been awarded his costs in respect of pleader's fees. Hence I am of opinion that no appeal should be preferred against the ~~order of the~~ decree of the Court in respect of costs awarded to the pl.f from the deft.

Yours faithfully,

Sd. A.C. Angadi.

Dist. Govt. Pleader, Bijapur.

No. 132 of 1953.
4-11-1953.

Copy forwarded with respects to the Remembrancer of Legal Affairs, Bombay No. 1 along with an uncertified copy of the Judgment.

A. Angadi

Dist. Govt. Pleader, Bijapur.



pleader for the plff passed the purshisEx.43 stating that the suit should be disposed of by awarding the costs. The arguments of the learned pleader for the plff and the learned Govt. pleader were heard. The learned Govt.Pleader argued that no costs should be awarded to the parties, while the learned.pleader for the plff passed for plff's costs, on the ground that the plff was forced to come to the Court when he was discharged from service and when the deft did not care to consider the grievances of the plff when the plff approached it to reverse the order of the Collector. It is true that the plff had appealed to the deft against the order of the chief administrator Ex.36 and that plff's request was not granted then. The plff served the notice of suit under Sec.80 C.P.C. to the deft on 31-10-1951 but the deft did not settle the point upto 7-6-1952. The plff then came to the Court on 7-6-1952. The Govt.(deft) probably reconsidered the claim of the plff and ordered the Dist. Magistrate to reinstate the plff as a godown keeper. The Dist.Magistrate, accordingly sent the order of reinstating the plff as such, Ex.22 to the plff on 21-7-1953 i.e. some 7-8 months after the filing of the suit or 15-16 months after the service of notice under Sec.80 C.P.C.. The plff had been discharged from service and he could not have waited for a long time after giving the notice. However, the plff waited about 8 months after giving notice under Sec.80 C.P.C. and then filed the present suit. It can therefore be said that the plff was justified in filing the present suit after waiting for sufficient time to get himself reinstated. In the meanwhile, the defendant reconsidered plff's case and gave the orders for reemployment. The Dist.Magistrate, accordingly appointed the plff as godown clerk, with effect from the date of termination of his service Ex.22. After the passing of the said order,Ex.22, the plff had no necessity to proceed with the suit any further. The plff wanted that the Court should give him a decree while the learned Govt.Pleader desired that the plff should withdraw the suit. Though these ~~facts~~ ^{facts} were different, still the result was the same. The suit could not be heard. The Court was to consider mainly

37/10/7

if the costs should be awarded to the plff or not. The learned pleader for the plff wanted to prove the allegations of the plaint to get the costs of the suit. Later, the newly engaged pleader for the plff thought over the matter and passed the Purshis, Ex.43, requesting the Court to dispose of the suit by awarding costs to the plff, without granting decree for declaration and injunction.

I have stated above the facts and the circumstances of the case and I have also conceded that the plff had sufficient and reasonable grounds to come to the Court for the declaration and injunction. But on account of deft's orders in favour of the plff, the latter saved the trouble of proving his allegations before me. The plff has yet to work under the deft for many years and he should not have pressed for costs from his own employer, the deft. But when the plff insists for his costs, the Court will have to exercise the judicial discretion. It will be reasonable to award him his costs especially by taking into consideration that he was without an employment for about 3 years. But if I look to the favours done by the deft to the plff by giving him his pay from the date of the termination of his service, without taking any service from him (the plff), I think that the plff should not press for his costs. In the circumstances, following the principles of equity, I award the costs of the suit, except pleader's fees to the plff and order the parties to bear the costs of the pleaders themselves. There is no necessity to make it clear here that the plff cannot get already disallowed costs.

Order.

Suit does not survive as the relief sought by the plff is amicably granted and it is therefore disposed of. The deft do pay the costs of plff's suit except those of pleader's fees. The deft do bear its own costs.

4-11-1953.

Sd.M.H.Kazi.
Civil Judge, Sr. Dn.

357

Legal Department.

Submitted with reference to this office note dated 5.11.1953 at p.94 ante. ~~Am~~

The communication awaited from the D.G.P has now been received. It is at page 103 ante. As stated therein the suit has now been disposed of by the Court on the ground that the same does not survive as the relief sought by the plaintiff is ~~unlawfully~~ granted. In view of this, it is no longer necessary to consider the question referred to L.D. by C.S.D. i.e. whether G.L.S C.S.D. No. 978/2549/Estt.(D), dated 13.1.1953, should be permitted to be produced or privilege should be claimed in respect thereof. The C.S.D. may be informed accordingly.

Ind. A with
title made
by reference

Ref
14/11
Sol (M.L.)
14-11

The District Government Pleader, Bijapur, has informed under his endorsement No. 1361 dated the 4th November 1953, that the suit has now been disposed of by the Court on the ground that the same does not survive as the relief sought by the plaintiff is granted. In view of this, it is no longer necessary to consider the question referred to this office by the Civil Supplies Department, whether G.L., C.S.D., No. 978/2549/Estt.(D), dated the 13th January 1953 should be permitted to be produced or privilege should be claimed in respect of thereof.

cc. Sec
✓ For Remembrancer of Legal Affairs.

U.R. to C.S.D., No. 23614/E, dated the 24th November 1953.

MRP.
21/11.

Submitted to officials

24/11

S.S. (21/11) (R.L.A.)

with C.S.D.
202 ad
978 v
one letter
bunch
10/11
21/11

In the Court of the Civil Judge, Sr.Dn.Bijapur.

1. Krishnaji Gundu Galgoli, Brahmin, occupation
Nil at present, age about 40 years, residing at
Jamkhandi Dist. Bijapur. ... plff.

Vs.

1. The State of Bombay through the Collector of
the Dist. of Bijapur at Bijapur ... Defendant.
Order below Ex.

The suit was filed by the plff for a declaration that the order of the Collector discharging the former from service was illegal and not binding on him and also for an injunction for restraining him. The deft filed the W.S. Ex.19, denying the allegations made in the plaint and justifying its actions taken in the matter. It stated that plff's conduct was found to be suspicious by the Prant officer when the plff was working as a temporary go-down keeper. It stated that there was no provision in the B.C.S.Rules for holding an inquiry in respect of a temporary servant and that the order of the District Magistrate did not contravene any rule of the B.C.S.Rules. It also prayed for costs of the suit.

But on the very date of filing of the W.S. Ex.19 the deft also filed the purshis, Ex.21, stating that the deft had set aside the order of the Dist. Magistrate of 11-10-1949 and that the Dist. Magistrate had reinstated the plff in service in 1953. He further stated in the said purshis that the suit would not survive and that it should either be ~~withdrawn~~ withdrawn by the plff or that it should be dismissed. The plff replied to Ex.21 at Ex.24 by saying that his suit should be ^{deemed} deemed with costs as plff's rights were recognised by the deft.

The issues were framed at Ex.29 from the pleadings. There was no necessity of any oral evidence in the case both the parties relied on the documents Ex.s 21, 35, 39. The plff also desired the prosecution of some other documents by the deft. In the meanwhile, the learned

pleader for the plff passed the purshisEx.43 stating that the suit should be disposed of by awarding the costs. The arguments of the learned pleader for the plff and the learned Govt. pleader were heard. The learned Govt. Pleader argued that no costs should be awarded to the parties, while the learned pleader for the plff passed for plff's costs, on the ground that the plff was forced to come to the Court when he was discharged from service and when the deft did not care to consider the grievances of the plff when the plff approached it to reverse the order of the Collector. It is true that the plff had appealed to the deft against the order of the chief administrator Ex.36 and that plff's request was not granted then. The plff served the notice of suit under Sec.80 C.P.C. to the deft on 31-12-1951 but the deft did not settle the point upto 7-6-1952. The plff then came to the Court on 7-6-1952. The Govt. (deft) probably reconsidered the claim of the plff and ordered the Dist. Magistrate to reinstate the plff as a godown keeper. The Dist. Magistrate, accordingly sent the order of reinstating the plff as such, Ex.22 to the plff on 21-2-1953 i.e. some 7-8 months after the filing of the suit or 15-16 months after the service of notice under Sec.80 C.P.C.. The plff had been discharged from service and he could not have waited for a long time after giving the notice. However, the plff waited about 8 months after giving notice under Sec.80 C.P.C. and then filed the present suit. It can therefore be said that the plff was justified in filing the present suit after waiting for sufficient time to get himself reinstated. In the meanwhile, the defendant reconsidered plff's case and gave the orders for reemployment. The Dist. Magistrate, accordingly appointed the plff as godown clerk, with effect from the date of termination of his service Ex.22. After the passing of the said order, Ex.22, the plff had no necessity to proceed with the suit any further. The plff wanted that the Court should give him a decree while the learned Govt. Pleader desired that the plff should withdraw the suit. Though these firms were different, still the result was the same. The suit could not be heard. The Court was to consider mainly

117

45

if the costs should be awarded to the plff or not. The learned pleader for the plff wanted to prove the allegations of the plaint to get the costs of the suit. Later, the newly engaged pleader for the plff thought over the matter and passed the Purshis, Ex.43, requesting the Court to dispose of the suit by awarding costs to the plff, without granting decree for declaration and injunction.

I have stated above the facts and the circumstance of the case and I have also conceded that the plff had sufficient and reasonable grounds to come to the Court for the declaration and injunction. But on account of deft's orders in favour of the plff, the latter saved the trouble of proving his allegations before me. The plff has yet to work under the deft for many years and he should not have pressed for costs from his own employer, the def. But when the plff insists for his costs, the Court will have to exercise the judicial discretion. It will be reasonable to award him his costs especially by taking into consideration that he was without an employment for about 3 years. But if I look to the favours done by the deft to the plff by giving him his pay from the date of the termination of his service, without taking any service from him (the plff), I think that the plff should not press for his costs. In the circumstances, following the principles of equity, I award the costs of the suit, except pleader's fees to the plff and order the parties to bear the costs of the pleaders themselves. There is no necessity to make it clear here that the plff cannot get already disallowed costs.

Order.

Suit does not survive as the relief sought by the plff is amicably granted and it is therefore disposed of. The deft do pay the costs of plff's suit except those of pleader's fees. The deft do bear its own costs

4-11-1953.

Sd. M. R. Kazi.
Civil Judge, Sr. Dn.

(OSP'S No. 1548 of 3-12-53)

DECREE.

Civil Suit No. 132 of 1952.

In the Court of the Civil Judge, Sr. Dn. Bijapur.

1. Krishnaji Gundo Galgali, Brahmin, occupation Nil at present, age about 40 years, residing at Jamkhandi Dist. Bijapur. plff.

Vs.

1. The State of Bombay through the Collector of the District of Bijapur at Bijapur. ... Defendant.

Claim valued at Rs 205/-.
For Court fees and jurisdiction.

The plaintiff begs to submit as under:-

1. The plff joined the service of the Jamkhandi State in the year 1942 as a clerk. He was made permanent from 19-4-47 in that post as per Jamkhandi State Gazette Notification dated 15-9-1949 at page 301 after having passed the sub-service Departmental Examination under the State rules held in the December 1946. After merger of the Jamkhandi State in the province of Bombay plff was absorbed in the new set-up and continued as a clerk in the Treasury branch at Jamkhandi till February 1949. From February 1949 onwards the plff was transferred to the Supply Department with an increment of Rs 25/- in the pay under the orders of the Chief Administrator No. 54/XII 17036 dated 1-2-49. The plaintiff was further posted as godown keeper at Banhatti village from 1-8-1949 under the orders of the Collector of Bijapur.

2. The plaintiff was continuing in service of the State of Bombay in the Supply Department as a godown Keeper at Banhatti till 11-10-1949 when relying upon an unfounded and baseless report of the Prant officer of Mr. Dalvi who paid a surprise visit to the godown at Banhatti and inspected the stores but without getting full information or explanation from plff reported that the conduct of the plff was highly suspicious and plff was discharged by an order of the Dist. Magistrate and Collector of Bijapur dated 11-10-1949 alleging that the plff was reported to be unreliable, in respect of his work as the godown keeper at Banhatti, there being some alleged attempt of misappropriation of the food-

grains stored.

3. The plff submits that order of discharge discontinuing the services of the plff passed by the District Magistrate and Collector dated 11-10-1949 is unwarranted and illegal. Plff further submits that the allegation based upon the baseless report of the Prant Officer Jamkhandi that the plff is unreliable is denied as the same is unreal and not based on facts or circumstances in report of the work of plff in the past of the Godown keeper at Banhatti. No enquiry as such was ever held giving opportunity to the plff to prove his innocence or reliability. The order of discharge was passed summarily and hence it is not legal and binding upon plff as it contravenes the principles of the B.C.S. Rules applicable to permanent servants of the State. The plff was and ought to be treated as a permanent servant under resolution of Government of Bombay dated 26-4-1950.

4. Plff denies that he ever acted against rule and discharged his duties as godown keeper at Banhatti with any motive of wrongful loss to Government or wrongful gain to himself. The facts also do not disclose any fault with the plff in respect of his handling of the food grains stock stored at the godown at Banhatti of which he was the keeper. It is therefore submitted that the reasons given by the District Magistrate of Bijapur terminating plff's services is unreal and unwarranted.

5. Plff cannot therefore be discharged from service on such unreal reasons without inquiry with opportunity to the plff to explain things, hence this suit for declaration that the order of the District Magistrate and Collector Bijapur dated 11-10-1949 discharging plff from the service is illegal ultra vires and not binding upon plff as also for a consequential relief of mandatory injunction to reinstate plff as a clerk in the service of the State of Bombay and for further consequential reliefs.

6. The cause of action arose within the jurisdiction of this Court in October 1949 when plff was discharged from the services as a godown keeper at Banhatti.

7. The parties and cause of action having arisen within the territorial jurisdiction of this court this court has jurisdiction to conduct this suit.

8. As this suit is for declaration and mandatory injunction

49

it is valued at Rs 200/- plus Rs 5/- respectively and the court fee of Rs 18-12-0 and annas eight, in all Rs 19-4-0 is paid and the valuation is the same for the purpose of jurisdiction of the court and pleaders' fees.

9. Plff has served notice on the Collector of Bijapur as required by sec.80 of the C.P.Code and the suit is filed after the expiry of two months from the date of the service which is 2-11-1951.

10. The plff prays:-

- (i) It be declared that the order of the Collector of Bijapur discharging plff from his service is illegal and not binding on plff.
- (ii) A mandatory injunction be served upon the deft to reinstate plff in the service.
- (iii) Costs of this suit be awarded.
- (iv) Any other relief that the plff may be entitled in justice and equity.

This suit came up for hearing before Shri M.H.Kazi, Civil Judge, Sr.Dn.Bijapur, on 4th November 1953 and after hearing Shri G.N.Gokhale pleader for the plff and Shri A.C. Angadi, Dist.Govt.Pleader, Bijapur, the following order and decree is made as under:-

Suit does not survive as the relief sought by the plff is amicably granted and it is therefore, disposed of. The deft do pay the costs of plff's suit, except those of pleader's fees. The defendant do bear its own costs.

BILL OF CCSTS.

For plaintiff.			For defendant.		
	Rs	as ps.		Rs	as ps.
1. Stamp for plaint.	19	4 -	1. Stamp for Vakalat.	-	- -
2. Stamp for Vakalat.	1	4 -	2. Stamp for applications Exs. 13, 14, 15, 16, 18, 30	3	12 -
3. Stamp on applications Exs. 6, 6, 7, 8, 9, 11, 23, 28, 32	6	14 -	3. Process fee.	-	- -
4. Pleader's fee 33, 34	18	12 -	4. Pleader's fee.	18	12 -
5. Bhatta to witnesses.	-	- -	5. Bhatta for witnesses.	-	- -
6. Commissioner's fee	-	- -	5. Stamp for counter claim.	-	- -
7. Process fee	5	- -	6. Fee for counter claim.	-	- -
8. Stamp on copies filed.	-	- -			
9. Stamp on cross-objections.	-	- -			
	51	2 -		22	8 -
	49	12 -			
Costs disallowed.			Costs disallowed.		
Stamp on applications			1 Stamp on applications	3	12 -
Process fee.	6	14 -	2. Process fee.	-	- -
3. Pleader's fee.	18	12 -	3. Pleader's fee.	-	- -
	23	8 -		3	12 -
	25	8 -		18	12 -

Decree prepared by
Sd. I. K. Kop.
Clerk.

Pleader for the plff.
Shri G.N.Gokhale.

Pleader for the deft.
Shri A.C.Angadi.D.G.P.

Given under my hand and seal of the Court
This day of 4th November 1953.

84. 4. H. Kazi.

(Seal of the Court).

Civil Judge, Jr.Dn.Bijapur.

Note:- Parties to this suit are required to take all the documents filed by them after the period of appeal is over, failing which, they will be liable to be destroyed.

5/ Suits:

Bijapur.

For a declaration that the order of the Collector discharging him from service is illegal and not binding upon him and for a mandatory injunction directing Government to reinstate him in service.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 16023/E.

Bombay Castle, 29th July 1953.

Letter from the Collector of Bijapur, No. L.A.W. 212, dated the 27th

In THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

Civil Suit No. 192 of 1952.

Krishnaji Gundo Galgali ... Plaintiff;

The State of Bombay ... Defendant.

August 1952—Forwarding the

papers in the suit noted in the

margin; and requesting sanction

to its defence.

Memorandum to the District Government Pleader, Bijapur, No. 1244/E, dated the 20th January 1953—Forwarding a copy of the brief with its accompaniments in advance.

x Leg H 143—1

[P.T.O.]

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order and in the name of the Governor of Bombay,

M. R. Meher

Original for M. R. MEHER,
Secretary to Government.

G. R. No. 16023/E, L. D., dated the 29th July 1953.

- 1/3/54*
Col
1/12/53 To
- The Civil Supplies Department,
 - The Collector of Bijapur,
 - The District Government Pleader, Bijapur (with two copies of the brief).

With a copy of the brief.

No. of 1952.

Copy forwarded for information and guidance to

Chronological State of Facts.

The plaintiff was a permanent servant of the former Jamkhandi State and was working as a clerk in the Huzur Treasury at Jamkhandi at the time of the merger of that State with the State of Bombay in March 1948. After merger, he continued to work in that post. Then, on 28th November 1948 he was served with three months' notice by the Chief Administrator, Sangli, under Government Resolution in the Political and Services Department No. 2735/46, dated 7th September 1948 stating that as it was not possible to continue his services owing to superfluity of staff he will be discharged from service after the expiry of three months from 1st December 1948. Thereafter on 28th January 1949 he was transferred to the office of the Additional Administrator at Jamkhandi under Chief Administrator, Sangli's order No. 54 XII/783, dated 28th January 1949 and was continued in service beyond the period of notice under Government orders up to 1st August 1949, the date on which the new set-up came into force. It may here be mentioned that the plaintiff's services in the State were treated to have been terminated on 31st July 1949 (*vide* Chief Administrator, Sangli's Order No. 52/G/351, dated 13th May 1949). Then from 1st August 1949 the plaintiff was appointed temporarily as Godown-keeper at Banhatti under District Magistrate, Bijapur's order No. CSEST/States/640, dated 27th July 1949. While he was thus working as temporary Godown-keeper at Banhatti, the Prant Officer, Jamkhandi Division, paid a visit to the Godown on 27th September 1949 and during the course of inspection, he having found that there was unaccounted excess of foodgrains in the Godown and that the conduct of the Godown-keeper was highly suspicious, he suspended the plaintiff and addressed letter No. INS/GDN dated 27th September 1949 to the Mamlatdar, Jamkhandi bringing the aforesaid facts to his notice and submitted also a copy thereof to the District Magistrate (Supply), Bijapur, whereupon the latter by his order No. CSEST dated 11th October 1949 discharged him from service with effect from the date of his suspension. Against this order, of the District Magistrate and Collector, the plaintiff went in appeal to the Commissioner Southern Division, Belgaum but the same was dismissed by the latter under his No. GDN/EST dated 3rd April 1950. Meanwhile, the plaintiff had also addressed applications to the Hon'ble Prime Minister, Hon'ble Minister, Home Department and also to the Chief Secretary, Political and Services Department and he was informed under Government in C. S. D. No. 978/1043/Estt. dated 22nd March 1950 that

Government did not think it necessary to interfere with the orders already passed by the District Magistrate, Bijapur. Then the plaintiff applied for his re-employment to the Hon'ble Minister, Revenue Department, on 10th May 1950 and the Hon'ble Minister for Civil Supplies on 16th December 1950. In reply to these applications also he was informed by Government in C. S. D. under their No. 978/4677/Estt. (D) dated 20th November 1950 and No. 978/8116/Estt. (D) dated 10th August 1951 respectively that Government saw no reason to reconsider his case and to reinstate him in service. Thereafter the plaintiff gave notice of suit to Government on 31st October 1951 under section 80 of the Civil Procedure Code and filed the present suit on 14th April 1952 for a declaration that the order of the Collector discharging him from service is illegal and not binding upon him and for a mandatory injunction directing Government to reinstate him in service.

Grounds of Defence.

The main contention of the plaintiff seems to be that he should have been treated as a permanent Government servant as per orders contained in Government Resolution, Political and Services Department No. 2735/46-F, dated 26th April 1950 and as such he could only be discharged after a regular inquiry being held giving him an opportunity to be heard. As the order of the District Magistrate discharging him from service was passed without such an inquiry being held, it contravenes the principles of Bombay Civil Service Rules and is therefore not legal and binding on him.

The Government Resolution on which the plaintiff relies for his claim to be treated as a permanent Government servant is at page 11 in File IV. According to this Resolution, permanent servants of merged States appointed to hold temporary posts during the course of their absorption in Bombay Government service are to be treated as permanent servants for all purposes such as leave, pension etc. The plaintiff was, no doubt, a permanent servant of the former Jamkhandi State and was appointed to hold a temporary post of a Godown-keeper with effect from 1st August 1949, under District Magistrate Bijapur's order No. CSEST/States/640 dated 26th September 1949. But his appointment to this latter post was not during the course of his absorption in Bombay Government service since his services were estimated to be not likely to be required on reorganization by the Chief Administrator, Sangli, as per rule 1A (2) (c) of the Rules accompanying Government Resolution, Political and Services Department No. 2735/46, dated 7th September 1948 which was in force at that time and he was served with three months' notice

of discharge from 1st December 1948 and his services were thereafter terminated by the Chief Administrator, Sangli under his Order No. 52/G/351, dated 13th May 1949 at page 7 in File IV with effect from the date on which the new set-up came into existence i.e. 1st August 1949. The plaintiff's appointment to the post of Godown-keeper having thus been made after termination of his services as a permanent servant of the former merged State cannot be deemed to be made during the course of his absorption and as such the plaintiff was not entitled to be treated as a permanent servant. On the contrary it is quite clear from the order of his appointment as Godown-keeper that the said appointment was purely temporary and terminable at any time without any notice and without any reasons being assigned. Moreover, from the said order it appears that an undertaking to that effect was also to be taken from the plaintiff. No copy, however, of any such undertaking taken from the plaintiff is among the case papers. It is presumed that such an undertaking must have been taken from the plaintiff. On looking to the form in which such undertakings are usually taken it appears that it contains the following clause :—

"I understand that my employment under Government as.....is temporary and that my services may be dispensed with any time without notice and without any reasons being assigned."

The District Government Pleader is requested to ascertain from the Collector whether an undertaking in the above form is taken from the plaintiff and if so, to produce it in Court. There is no provision in the Bombay Civil Service Rules or the Bombay Civil Services Discipline Appeal Rules which requires an inquiry to be held before the services of any temporary servant engaged on such terms as referred to above are terminated. Possibly, the plaintiff may rely upon rule 55 of the Bombay Civil Services Conduct, Discipline and Appeal Rules. To this we must reply by saying that the termination of the services of the plaintiff is neither a discharge nor dismissal within the meaning of that rule read with rule 33 of the said Rules. Please see in this connection Explanation (c) to rule 33 of the Bombay Civil Services Conduct Discipline and Appeal Rules. The order of District Magistrate dated 11th October 1949 discharging plaintiff from service without an regular inquiry being held or without his being any opportunity to be heard is perfectly legal and binding upon the plaintiff. The contention of plaintiff that it is not so should therefore be denied.

Another contention of the plaintiff is aforesaid order of the District Magistrate is unwarranted and illegal as it is based

report of the Prant Officer, Jamkhandi Division, which is not true and founded on facts or circumstances in respect of his work as Godown-keeper.

The report of the Prant Officer referred to by the plaintiff is at page 1 in File III. On going through it, it will appear that it was made by the Prant Officer after actual inspection of the godown. At the time of the inspection the Prant Officer had found that there was some quantity of food-grains in excess of the quantity actually shown in the Stock Register and out of it some quantity of Jowar was further kept in a bag of size and colour different from the size and colour of the bags used in the godown, indicating that the conduct of the Godown-keeper was highly suspicious. The report of the Prant Officer was thus true and founded on facts and circumstances actually noticed by him at the time of the inspection of the godown. Accordingly the District Magistrate's order of plaintiff's discharge based thereon is perfectly justified and legal. The contention of the plaintiff that it is not so should be denied. Furthermore it should be urged that the appointment of the plaintiff being terminable at any time without notice and without any reason being assigned, it was quite open to the District Magistrate to discharge him from service at any time, apart from the report of the Prant Officer. It should be urged that he was not dismissed for misconduct, but only discharged as his services were no longer required.

6 The allegation of the plaintiff in paragraph 1 of the plaint that he was absorbed in the new set up is false and it should be denied. The new set up actually came into existence on 1st August 1949. Prior to that date the plaintiff's services as a permanent servant of the merged State were terminated by the Chief Administrator, Sangli, with effect from that date under his order No. 52/G/351 dated 13th May 1949 and his appointment as Godown-keeper from that date was, as already stated, purely temporary and terminable at any time without notice and without any reasons being assigned. Thus there was no absorption of the plaintiff in the new set up as alleged by the plaintiff. 6

The plaintiff is not entitled to the declaration or other relief claimed by him.

all these reasons, it should be urged that plaintiff's suit fails and it may be dismissed with costs.

Suits:

Bijapur.

For a declaration that the order of the Collector discharging him from service is illegal and not binding upon him and for a mandatory injunction directing Government to reinstate him in service.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 16402/2
Bombay Castle, 22nd April 1954.

Read Government Resolution, Legal Department No. 16023/E,

----- dated the 29th July
In the Court of the Civil Judge :
(Senior Division), Bijapur. : 1953.
Civil Suit No. 132 of 1952. : Letter from the
Krishnaji Gundo Galgali - Plaintiff. : District Government
vs. :
The State of Bombay. - Defendant. : Pleader, Bijapur
----- No. 1383 dated the
4th November 1953, stating that the suit noted in the margin
was decided by the Civil Judge, Senior Division on the 4th
November 1953 when the following order was passed:-

" Suit does not survive as the relief sought by the plff.
is amicably granted and it is therefore, disposed of.
The deft do pay the costs of plff's suit, except those
of pleader's fees. The defendant do bear its own costs."

Letter from the District Government Pleader, Bijapur
No. 1477, dated the 23rd November 1953, forwarding uncertified
copies of the judgment and decree.

RESOLUTION: The result of the suit is recorded.

By order and in the name of the
Governor of Bombay,

original *R. T. Katarki*
(R.T. KATARKI),
Deputy Secretary to Government

To

The Civil Supplies Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

Submitted for signature

KYK/21.4

21/4

Sol (M.C.) 21/

S.S.

DS (Cand)

forwarded
mac
22/4

1-1 to 53

Fate wa S. Bijapur/53.
(New)

16.

23/4

S.S. opd 20/4

S Bijapur/53
New
24/4/54